

***Election/Restrictions***

**DETAILED ACTION**

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-19 drawn to flare pellet assembly including first and second flare pellets arranged in a stack classified in class 102, subclass 352.
- II. Claims 20-25 drawn to method for assembling stack of first and second flare pellets disposed in a casing classified in class 102, subclass 343.
- III. Claims 26-29 drawn to non-granular flare pellet having a ratio of surface area to mass of at least 0.70 classified in class 149, subclass 110.
- IV. Claims 30-33 drawn to method for using flare pellet assembly comprising magnesium and sodium nitrate classified in class 102, subclass 336.
- V. Claims 34-37 drawn to method of using flare pellet assembly comprising magnesium, polytetrafluoroethylene and a fluoroelastomer with a first infrared output classified in class 102, subclass 283.
- VI. Claims 38-39 drawn to method of using flare assembly with a first and second infrared output classified in class 102, subclass 352.
- VII. Claims 40-42 drawn to method of using flare assembly with a first infrared output of at least 6000 w/ster in a mid infrared band between about 3.0 $\mu$  and about 5.5 $\mu$  for 2 seconds classified in class 102, subclass 292.

The inventions are distinct, each from the other because of the following reasons:

1. Inventions I and II are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make another and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the product as claimed can be made by a process that does not require disposing a casing about a portion of a pellet assembly.
2. Inventions I and III are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because the combination does not require non-granular flare pellets having a ratio of surface area to mass of 0.70. The combination has separate utility such as burning granular pellets having any particular surface area to mass ratio.
3. Inventions I and IV are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially

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different product or (2) the product as claimed can be used in a materially different process of using that product. See MPEP § 806.05(h). In the instant case the product as claimed can be used in a materially different process such as a process requiring any ignitable material other than magnesium and sodium nitrate.

Inventions I and V are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product. See MPEP § 806.05(h). In the instant case the product as claimed can be used in a materially different process such as a process requiring any ignitable material other than magnesium, polytetrafluoroethylene and a fluoroelastomer.

4. Inventions III and VI are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product. See MPEP § 806.05(h). In the instant case the process as claimed can be practiced with another materially different product such as any flare pellet assembly not requiring a non-granular flare pellet with a surface area to mass ratio of 0.70.

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5. Inventions III and VII are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product. See MPEP § 806.05(h). In the instant case the process as claimed can be practiced with another materially different product such as any flare pellet assembly not requiring a non-granular flare pellet with a surface area to mass ratio of 0.70.

6. Because these inventions are independent or distinct for the reasons given above, restriction for examination purposes as indicated is proper.

Applicant is advised that the reply to this requirement to be complete must include (i) an election of an invention to be examined even though the requirement be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

The election of an invention may be made with or without traverse. To reserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse.

Should applicant traverse on the ground that the inventions are not patentably distinct, applicant should submit evidence or identify such evidence now of record

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showing the inventions to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C.103(a) of the other invention.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Benjamin P. Lee whose telephone number is 571.272.8968. The examiner can normally be reached on Monday thru Friday 8-5. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Carone can be reached on 571.272.6873. The fax phone number for the organization where this application or proceeding is assigned is 571.272.8300.

/B. P. L./

8/17/2007

/Troy Chambers/

Primary Examiner, Art Unit 3641